



Agenda Date: 05/20/03
Agenda Item: 3A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

OFFICE OF CABLE
TELEVISION

I/M/O THE PETITION OF RCN TELECOM SERVICES,)
INC. AND PATRIOT MEDIA & COMMUNICATIONS)
CNJ, LLC FOR APPROVAL OF THE TRANSFER OF)
CERTIFICATES OF APPROVAL, FOR THE TRANSFER)
OF PARTNERSHIP INTERESTS AND FOR APPROVAL)
OF THE SALE OF ASSETS)

ORDER ON
REQUEST FOR
CLARIFICATION

Docket No.: CM02090653

(SEE ATTACHED SERVICE LIST)

BY THE BOARD¹:

The New Jersey Board of Public Utilities ("Board") and its Office of Cable Television ("OCTV"), pursuant to N.J.S.A. 48:5A-1 et seq., have been granted general supervision and regulation of and jurisdiction and control over all cable television systems which operate within the State of New Jersey, subject only to the limitations of Federal law. Pursuant to this authority, the Board issued an Order, dated February 6, 2003, approving the transfer of certificates of approval, transfer of partnership interests and the sale of assets from RCN Telecom Services ("RCN") to Patriot Media & Communications CNJ, LLC ("Patriot"). Thereafter, the Board received a letter, dated April 17, 2003, from the attorney representing Patriot, seeking clarification and confirmation that the February 6, 2003 Order set December 31, 2003 as the appropriate deadline for the promised cable system rebuilds in Princeton Borough, Princeton Township and Branchburg Township ("municipalities").

On February 5, 2003, the Board Staff and RCN executed an Administrative Consent Agreement, which, among other things, set forth a listing of construction commitments. Included in this was a commitment to a June 30, 2003 rebuild completion date for the municipalities. The Board reviewed and approved this agreement at its February 5, 2003 agenda meeting and issued an Order Accepting the Administrative Consent Agreement on February 13, 2003, under Docket No.: CX01070460.

¹ Commissioner Carol J. Murphy did not participate in the deliberation or the vote on this matter, as she did not participate in the deliberation or the vote on the original underlying Order.

At its February 5, 2003 agenda meeting, the Board also approved the Joint Petition of Patriot and RCN seeking approval of the Asset Purchase Agreement entered into by the parties, under Docket No.: CM02090653. Included in the Order memorializing the Board's approval was language that tracked the language used in the Asset Purchase Agreement and which noted that Patriot was accepting the "schedule for the completion of the rebuild of the CATV System, as has been presented to the Board and various communities." Patriot claims that the attachments to the Joint Petition and Asset Purchase Agreement show a rebuild completion date for the municipalities of December 31, 2003. It is the contention of Patriot that the Board Order accepting the Joint Petition and Asset Purchase Agreement modified the date of completion included in the Administrative Consent Agreement such that the December 31, 2003 completion date should be binding upon both Patriot and the Board.

The language and terms of the Consent Agreement are binding both upon the parties involved and upon Patriot through its assumption of the obligations of RCN in both the Purchase Agreement and the Administrative Consent Agreement. As noted in the Administrative Consent Agreement,

5) Should RCN's New Jersey cable systems, or any part thereof, merge and/or migrate to another system, its ownership or control be otherwise sold or transferred to another entity, before completion of any of the terms, conditions and requirements of the Consent Agreement and this Order are fully satisfied, said terms conditions and requirements will be fully binding on RCN and any successor until all such provisions are satisfied.

Likewise, also in the Administrative Consent Agreement, the term "company" is defined to include "RCN Telecom Services, Inc. as well as its subsidiaries, successors and assigns." Additionally, in the Board Order of Approval of the Joint Petition and Asset Purchase Agreement, the Board specifically noted that:

12) All of the obligations imposed upon RCN and/or Home Link under the Certificates of Approval issued by the Board for the municipalities served by RCN and/or Home Link, or by any and all Offers of Settlement, Consent Agreements, or other commitments made by RCN and Home Link relating to the operation of its Central New Jersey cable systems, including, but not limited to all Orders issued by the Board in Docket No. CX01070460 [the above referenced Order Accepting the Administrative Consent Agreement] and/or relating to any and all of the terms, conditions and requirements of any Certificate of Approval, Offers of Settlement, Consent Agreements, rates or other matters within the jurisdiction of the Board shall be assumed, in full, by Patriot, provided however, that all of the foregoing, to the extent effective on or before the closing date, will all be RCN's as well.

As such, the Board HEREBY FINDS that the Consent Agreement between Board Staff and RCN, which applies to Patriot through the Board Order of Approval of the Joint Petition and Asset Purchase Agreement, controls on the question of timing on the rebuilds. Patriot is bound to the June 30, 2003 completion date for the municipalities and nothing in any Board Order changed or relieved it of this requirement. Indeed, while the Board Order of Approval of the Joint Petition and Asset Purchase Agreement references the language from the Purchase Agreement in discussing the procedural context of the petition, the Order explicitly is

conditioned upon compliance with the provisions of the Consent Agreement, including the rebuild schedule, and therefore Patriot knew, or should have known, of the terms and conditions included in the Agreement.

Accordingly, based upon the foregoing, the Board HEREBY ORDERS that Patriot shall abide by the deadline of June 30, 2003 for the rebuild of the cable systems in the municipalities of Princeton Borough, Princeton Township and Branchburg Township as set forth in the Board Order Accepting the Administrative Consent Agreement, Docket No.: CX01070460, issued on February 13, 2003.

DATED: May 21, 2003

BOARD OF PUBLIC UTILITIES
BY:

(signed)

JEANNE M. FOX
PRESIDENT

(signed)

FREDERICK F. BUTLER
COMMISSIONER

(signed)

CONNIE O. HUGHES
COMMISSIONER

(signed)

JACK ALTER
COMMISSIONER

ATTEST:

(signed)

KRISTI IZZO
SECRETARY

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